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13	UNITED STATES DISTRICT COURT	
14	NORTHERN DISTRICT OF CALIFORNIA	
15	SAN JOSE DIVISION	
16		
17	ZINUS, INC. a California Corporation,	Case No. 07-CV-03012-PVT
18	Plaintiff,	TOWER MOTION FOR A DIMINISTRA TIME
19	V.	JOINT MOTION FOR ADMINISTRATIVE RELIEF TO VACATE ORDER GRANTING
20 21	SIMMONS BEDDING COMPANY, a Delaware corporation, and DREAMWELL, LTD., a limited liability company of Nevada,	PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION
2223	Defendants.	
24	AND RELATED COUNTERCLAIMS	
25		
26	Pursuant to Local Rule 7-11, plaintiff Zinus, Inc. ("Zinus"), defendant Simmons Bedding	
27	Company ("Simmons") and defendant and counterclaimant Dreamwell, Ltd. ("Dreamwell") will	
28	move, and hereby move, for an Order vacating this Court's March 11, 2008 Order Granting	
	JOINT MOTION TO VACATE SUMMARY ADJUDICATION ORDER	-1-

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Plaintiff Zinus, Inc.'s Motion for Reconsideration; and Granting Plaintiff's Motion for Summary Adjudication (the "Summary Adjudication Order").

In accordance with Federal Rule of Civil Procedure 54(b), the Court has the power to modify any interlocutory order such as the Summary Adjudication Order at any time prior to entry of final judgment. *See Persistence Software, Inc. v. The Object People, Inc.*, 200 F.R.D. 626 (N.D. Cal. 2001) (per Judge Hamilton). The Court has broad discretion regarding whether to vacate such orders. *Id.* And interlocutory orders like the Summary Adjudication Order are commonly vacated where all parties to the action agree that such action would be appropriate. *See, e.g., id.* (vacating order granting partial summary judgment of patent invalidity based on settlement of the parties); *U.S. Gypsum Co. v. Pacific Award Metals, Inc.*, 2006 WL 1825705 (N.D. Cal. 2006) (per Judge White) (vacating claim construction order and order granting partial summary judgment of patent non-infringement).

Here, on April 21, 2008, the parties entered into a confidential Settlement Agreement that completely resolves the pending litigation between the parties. Pursuant to the terms of that

Here, on April 21, 2008, the parties entered into a confidential Settlement Agreement that completely resolves the pending litigation between the parties. Pursuant to the terms of that Settlement Agreement, the parties agreed to jointly request that the Court vacate the Summary Adjudication Order. The agreement to jointly file this motion was an important factor in successfully resolving this litigation. Such an agreement has been found a sufficient basis to support a similar motion to vacate an Order granting summary judgment of non-infringement. See U.S. Gypsum, supra ("In support of their motion, the parties contend that the agreement to file the instant motion was a significant factor in successfully resolving this litigation. The Court concludes that there are no considerations that would justify denial of the motion. Accordingly, the parties' joint motion to vacate is GRANTED.").

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1	As in U.S. Gypsum, there are no considerations here that would justify denial of this		
2	motion. Accordingly, the parties respectfully request that their Joint Motion to Vacate be granted		
3	and that the Summary Adjudication Order be vacated		
4			
5	Dated: April 21, 2008		
6	PERKINS COIE LLP		
7			
8	ByKenneth B. Wilson		
9	Attorneys for Defendant SIMMONS BEDDING COMPANY		
10	and Defendant and Counterclaimant DREAMWELL,		
11	LTD.		
12	Dated: April 21, 2008		
13	IMPERIUM PATENT WORKS		
14	Rv /s/		
15	ByBy		
16	Attorneys for Plaintiff and Counterdefendant ZINUS, INC.		
17	Zhvob, nve.		
18			
19	ATTESTATION PURSUANT TO GENERAL ORDER 45		
20	I, Kenneth B. Wilson, hereby attest that concurrence in the filing of this document has		
21	been obtained from the other signatory.		
22	I declare under penalty of perjury under the laws of the United States of America that the		
23	foregoing is true and correct. Executed on April 21, 2008 in San Francisco, California.		
24			
25	/s/		
26	Kenneth B. Wilson		
27			
28			
	JOINT MOTION TO VACATE		

JOINT MOTION TO VACATE SUMMARY ADJUDICATION ORDER 07-CV-03012-PVT